IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1380 of 1981

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UMEDBHAI H PATEL - Appellant(s)
Versus
MAGANBHAI S SOLANKI & 3 - Defendant(s)

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Appearance :
MR MS SHAH for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MS MAYA DESAI for MR MD PANDYA for Defendant(s) : 2,
MS ARCHANA ACHARYA with MR SB VAKIL for Defendant(s) : 3,
None for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 20/09/2006

ORAL JUDGMENT

1. The appellant has filed this appeal to seek enhancement of the compensation awarded to him by MACT

Kheda at Nadiad, by judgment and award made in MACP No. 22/1980. The appellant has been awarded Rs.9,600=00 against his claim of Rs.25,000=00 for compensation on account of the injuries received in an accident which took place on 1st December, 1979 at about 10:00 a.m. On that day, the appellant was pillion rider of the scooter bearing registration no. GJU 3718, driven by the friend of the appellant namely, Bhupendrabhai Maganbhai Patel. They were travelling on Anand-Karamsad road. While they were trying to take turn towards the petrol pump, by giving signal, respondent no. 1, who was driver of the bus, owned by respondent no. 2, drove the vehicle rashly and negligently and knocked down their scooter from behind. As a result of the same, the appellant sustained injuries on both the legs, on knees, muscles, nerves and tissues were torn for which he was admitted in the hospital of Dr. N.A. Patel at Anand. He was treated as indoor patient and he was operated thrice [wrongly stated as twice in the judgment of the Tribunal]. It was the say of the appellant that because of the injuries sustained by him, he was rendered permanently disabled and had to take treatment for considerably long time. He, therefore, filed petition before the Tribunal to claim the aforesaid sum. He stated that the injuries were sustained by him due to rash and negligent act of respondent no. 1, the

driver of the bus owned by respondent no. 2. He stated that he was earning Rs.1,500=00 per month from the agriculture and on account of the injuries, he was was unable to do the work and generate income for about four months. He had to hire a person to carry out the work. He also stated that he had to spend Rs.5,000=00 towards travelling and medical expenses. He further stated that he would also be required to spend Rs.3,000=00 more on that count. He averred that he had spent Rs.500=00 to engage labourer to look after the agricultural operation. The applicant, therefore, claimed Rs.22,000=00 for damages suffered on account of lack of supervision and made total claim of Rs.25,000=00.

2. The claim was contested by the respondents. They denied the averments made in the petition. Respondent no. 2 filed written statement at Exh. 20, which was adopted by respondent no. 1 also. It was averred that the appellant received injuries on account of his own negligence and also that of the driver of the scooter. It was denied that respondent no. 1 drove the vehicle with speed and in rash and negligent manner. Before the Tribunal, the appellant examined himself and also examined Dalubhai Ashabhai Parmar, in support of his claim. As against that, no witness was examined by the

respondents. But the Tribunal on appreciating the material produced before it came to the conclusion that the appellant was entitled to receive Rs.3,500=00 for medicines and medical treatment; Rs.500=00 for services of close relative; Rs.800 for the total loss of income for four months at the rate of Rs.200=00 per month; Rs.800=00 for the services of his servant; Rs.4,000=00 for pain, shock and suffering. In all Rs.9,600=00. The Tribunal has directed that the said amount to be paid together with costs and interest at the rate of 6% per annum.

3. Mr. Mehul S. Shah learned advocate for the appellant has submitted that the assessment made by the Tribunal of compensation is not proper and it is grossly on lower side. He has further submitted that the Tribunal has committed error in not awarding any compensation under the head of future loss of income. According to him, the award under the head of pain and suffering is also on lower side and at least Rs.10,000=00 ought to have been awarded. As against that Ms. Maya Desai learned advocate appearing for respondent no. 2 has submitted that considering the value of money prevailing during that time, the award is just and proper. She has further submitted that no evidence has been produced by the

appellant to establish any future loss of income. She has also submitted that no documentary evidence is produced by the appellant to establish his income from agriculture. She has, therefore, submitted that the award is just and proper and no interference is required by this Court.

4. Having perused the record and proceedings of the case and having carefully considered the rival submissions, it clearly appears that the appellant has received injuries on his legs in a vehicular accident while he was travelling on a scooter as pillion rider and the Tribunal on appreciation of the evidence has come to the conclusion that respondent no. 1 was the driver of the offending vehicle, drove the vehicle in a rash and negligent manner and as a result of the same, while the friend of the appellant namely Bhupendrabhai Maganbhai Patel was negotiating turn by giving proper signal and also showing hand, respondent no. 1, knocked his scooter down, due to which he received injuries on both the legs. The finding with regard to negligence of respondent no 1 has not been challenged. Therefore, it has become final and there is no need for me to deal with it.

4.1. The question required to be considered by me is

that whether the compensation determined by the Tribunal is just and proper and adequate or it is required to be enhanced. There is no dispute with regard to the fact that the appellant had received injuries on both the legs, on knees, muscles, nerves and tissues were torn out and he was required to be hospitalized as indoor patient for a considerably long period. He was admitted in the hospital of Dr. N. A. Patel. There is also no dispute that for skin grafting he was thrice operated upon. Though there is no precise evidence with regard to the extent of disability suffered by the appellant, the medical certificate shows that he had sustained the following injuries.

> (1) A large regard would C.L.W. 35 cms x 15 cms x bone deep, vertical and sharp shaped, exposing and lacerating muscles, nerves and tissues in pooliteal fossa on right leg.
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> (2) Multiple small abrasions on front of left knee and leg.

4.1.1. He remained in the hospital from 1st December, 1979 upto 28th January, 1980 [wrongly typed as 21st August, 1980 in the judgment of the Tribunal]. Thus, it can be seen that nearly for two months he had remained

in the hospital. During that period, he was thrice operated upon. The follow-up treatment lasted till end of March, 1980. It is also indicated by Dr. Patel who treated the appellant, that he was advised to undertake light work and to avoid strenuous work for four months. In view of the same, it clearly appears that even judging by the standard of those days, the amount awarded under the head of pain and suffering is on lower side. In the case of **Babu Mansa v. Ahmedabad Municipal Corporation & Ors., reported in G.L.R. [XIX] at pg.492**, the Division Bench of this Court has awarded Rs.15,000=00 as conventional global amount for pain, shock and suffering for the fracture and shortening of the leg. In the instant case, there is no such complication, but the fact that he had to be in the hospital for almost two months and was required to undergo three operations and when he had sustained certain disfigurement of his body, amount of Rs.4,000=00 towards the pain, shock and suffering is inadequate. In my opinion, it ought to have been at least to the extent of Rs.8,000=00. Further, there is evidence of the appellant as well as Dalubhai Ashabhai, that Dalubhai Ashabhai was hired because the appellant was not in a position to carry on the work properly on account of the disability suffered by him. He paid Rs.200=00 per month. It is the say of the appellant as well as Dalubhai

Ashabhai that he continued to be in the employment of the appellant even after the appellant resumed his agricultural work. It is also the say of the appellant that since he was not in a position to discharge the function of supervision of the agricultural operation properly, he suffered financial loss of Rs.3,000=00 to Rs.4,000=00 annually. So far as the evidence of witness Dalubhai Ashabhai, is concerned, some general and vague suggestions are made by respondents no. 1 and 2, but they are not able to dislodge the witness. Hence, the case of the appellant with regard to continuance of witness Dalubhai Ashabhai as an employee in the field on permanent basis is required to be accepted. So far as the Tribunal is concerned, it has not taken into consideration any future loss of income, considering the fact that the appellant had to pay Rs.200=00 to Dulabhai every month from his agricultural income, to that extent he has suffered loss and the loss can be assessed to Rs.200 per month, which would come to Rs.2,400=00 per annum. The appellant was aged 46 years on the date of the accident. He could have actively carried on the activity of agriculture for another, say 10 to 15 years. The multiplier of 9 could safely be awarded. The appellant would therefore, be entitled to receive Rs.21,600=00 under the head of future loss of income. He is also

entitled to receive additional amount of Rs.4,000=00 under the head of pain, shock and suffering. This will be over and above the award made under the other heads. However, the claim of the appellant is restricted to Rs.25,000=00 only. Hence, he is entitled to receive full amount as claimed by him, together with proportionate costs and interest at the rate of 6% per annum from the date of the application till realization on additional amount. In view of the same, the judgment and award of the Tribunal is modified and the compensation awarded by the Tribunal is enhanced to the aforesaid extent. The net result is that the appeal is allowed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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